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SIR SAMUEL ROMILLY AND CRIMINAL LAW REFORM.¹

"RELIGION," says Dr. Johnson, in his life of Milton, "of which the rewards are distant and which is animated only by faith and hope, will glide by degrees out of the mind unless it be invigorated and reimpressed by external ordinances, by stated calls to worship, and the *salutary influence of example*."

It is not religion which I am so unwise as to discuss at this time and place, but rather "*the salutary influence of example*" in our own noble profession of the law, whose obligations seem to me no less binding, whose purposes seem to me no less exalted, whose services no less lofty than those of the high priests of religion itself.

The voice which obtains justice for its fellows here on earth need hardly sink to silence before that which petitions for mercy in the world beyond. Each serves a use and neither a base or temporary one.

It has seemed to me that the highest earthly reward of a good man is to be recalled with love and veneration by his fellows; that the strongest incentive and the surest guide to excellence is found in the contemplation of the lives and behavior of those who, in the long test of time, have deserved and kept such love and veneration; who, being now but a little dust in an obscure grave, yet compel men to think deeply and feel nobly, even under strange skies in far lands and after years have laid low all who ever heard their voices or beheld their faces. Therefore I ask leave to take up the life and services of Sir Samuel Romilly, lawyer and law reformer.

Madame La Marquise de Montespan desired for her children, who bore the royal arms of France with a bar sinister, a governess. The poor widow of Scarron, the deformed poet, was chosen and installed in the royal palace. By and by the self-controlled, calm, religious governess attracted Louis the King. Then followed, after some years, the secret midnight marriage by the Archbishop of Paris, and Madame Scarron, as Madame de Maintenon, the unacknowledged queen of France, ruled for a generation. The Church party triumphed. The edict of Nantes for religious toleration was revoked. The persecutions which followed drove many

¹ Annual address before the Bar Association of the State of Tennessee, delivered at Memphis, July 8, 1901.

of the best blood of France into exile, and among them was one, named Romilly, the son of a gentleman of good landed estate at Montpellier, in the south of France. The exile's youngest son Peter became a celebrated jeweller in London, and to him was born a son Samuel in 1757. The boy was placed with a great commercial firm, related to his family, and was designed for trade, but the death of the partners dissolved this partnership and so changed his purpose, and he returned home to act as an assistant to his father. He developed a talent for rhyme, which his people, as is often the case, hailed with undue applause. He took up Latin when 16 or 17, and read most of the prose writers of pure Latin, and many of the Greek writers in Latin translations. As he drew to manhood he received a considerable legacy from a rich relative. He had always disliked his father's business, and this legacy enabled him to enter himself as a student of law.

He first served as an articled clerk to Mr. Lally, one of the sworn clerks in chancery, for some years, but at 21 made up his mind to study for the bar and entered Gray's Inn. As he read, he formed a common-place book, which, even when he was in great practice making a fortune a year, he still found of great use to him. He did not join the debating societies then in high favor, but read and translated much ancient history with a view to form an elegant style, and adopted the expedient suggested by Quintilian "of expressing to himself in the best language he could whatever he had been reading, doing this, to economize time, while walking or riding in the crowded streets." The result was a style valued in its day, but to the present taste often over-elaborate and self-conscious, by no means terse, idiomatic, or virile.

He injured his health too by over-study, and seemed to have before him a brief, painful, wretched, and useless life. Just then there broke out the riots so vividly pictured in *Barnaby Rudge*, which had been excited by Lord George Gordon. The Inns of Court were marked for destruction, and Gray's Inn, where many Catholics were entered, was in especial danger. The barristers and students armed in their own defence, and poor young Romilly was up an entire night under arms and stood sentinel for hours at the gate in Holborn. These brief hardships of war still further reduced his shattered health. After months of suffering he had occasion to travel to Switzerland to return to his sister, then living there, her little child. It was a time of tumult, and the journey was made by a circuitous route by carriage through the Nether-

lands and Germany, travelling thirty to forty miles a day. The change of air and scene, however, restored in a great degree his health and spirits. He remained long in the mountain republic and saw much of the leaders of the popular cause, and thus early contracted a democratic sympathy which never left him. He even then sought to inform himself as to the criminal law and administration in the countries he visited, and at Geneva an interesting opportunity fell in his way. A burglary had been committed by a party of Savoyards, three were seized and three escaped. The proceedings were, as was usual on the continent, secret; none but the prisoner, his counsel, and two friends named by him could attend. Romilly knew one of the counsel, who suggested to the prisoners (who were strangers) that Romilly be named to assist. An oath was exacted from him, sworn to before the syndic, that he would not give or suffer to be taken, copies of any papers in the cause, and that he would return to the court, immediately after the cause should be ended, all the copies or extracts which he might have made for his own use, and he was then allowed to participate. All his clients were convicted. One, a lad of sixteen, was sentenced to be whipped and then sent to serve twenty years in the galleys of France. One was sentenced to see his companion whipped and to be then exiled for life, and the third was merely banished. The three accomplices who had escaped were sentenced to be whipped in effigy, which sentence was executed by the carrying around the city of pictures of men being whipped, inscribed with their names. This is a quaint picture of criminal justice in perhaps the most enlightened city of a republic in 1781.

At Geneva Romilly formed a lifelong friendship for a young man named Dumont, of his own age, studying for the Church. Dumont was later the celebrated *redacteur* of Jeremy Bentham's works, as much identified with him as Boswell with Johnson, and far more honorably.

On his return young Romilly passed through Paris, which was celebrating the birth of the ill-starred Dauphin. "There were public illuminations too," he says, "but these were commanded, and I felt no small surprise when I read placarded in the corners of the streets the mandate by which the loyal people of Paris were ordered to shut up their shops and to illuminate their houses for three successive nights, and the officers of the police were enjoined to see the order executed." D'Alembert, whom he met, called his attention to the effect philosophy had produced on the minds of

the people. He said he "was old enough to remember when such an event had made the whole nation drunk with joy; but now they regarded with great indifference the birth of another master."

In 1783 Romilly was called to the bar and intended going the circuit, but the death of his brother-in-law in Switzerland required his return to that country to bring back his sister and her children to England. He went by way of Paris, where he was delighted to meet our own Dr. Franklin, and he says, "Of all the celebrated persons whom in my life I have chanced to see, Dr. Franklin, both from his appearance and his conversation, seemed to me the most remarkable. His venerable, patriarchal appearance, the simplicity of his manners and language, and the novelty of his observations, at least the novelty of them at that time to me, impressed me with an opinion of him as one of the most extraordinary men that ever existed. The American constitutions were then very recently published. I remember his reading us some passages out of them and expressing some surprise that the French government had permitted the publication of them in France."

Romilly's friend and companion, Baynes, has left a full account in his journal of this interesting interview, and tells how Franklin reprobated that maxim that all men are equally corrupt, and when Romilly said that was the favorite maxim of Lord North's administration, Franklin replied that such men might hold such opinions with some degree of reason, judging from themselves and the persons that they knew. "A man," added he, with his usual shrewd plain wit, "who has seen nothing but hospitals, must naturally have a poor opinion of the health of mankind."

On the young barrister's return he took up the practice and went the Midland circuit, and he described its leader, Sergeant Hill, as "a lawyer of very profound and extensive learning, but with a very small portion of judgment and without the faculty of making his great knowledge useful. On any subject which you consulted him he would pour forth the treasures of his legal science without order or discrimination. He seemed to be one of the order of lawyers of Lord Coke's time, and he was the last of that race. For modern law he had supreme contempt; and I have heard him observe that the greatest service that could be rendered the country would be to repeal all the statutes and burn all the reports which were of a later date than the revolution." It is pleasant to know that he was the last of his race.

Already Romilly was dreaming of reform and writing private memoranda upon it. He had employed as his personal servant, as

a matter of charity, the husband of his old nurse, a sickly Methodist shoemaker, of Puritanical appearance but intemperate habits, nicknamed by the bar "the Quaker," and this servant, being at least zealous for his master, and noting his slow advance in the profession, advised him most earnestly that "The business of barristers depends upon the good opinion of attorneys, and attorneys never could think well of any man who was troubling his head about reforming abuses when he ought to be profiting by them."

If any of us has the like opinion at present, he has the authority of "the Quaker" to back him; but if Romilly had taken his servant's advice, his name would not be on our lips to-day.

At this time, 1784, Count Mirabeau, already famous, came to England bringing a short tract which he had written against the order of the Cincinnati, lately established in America, which he wished translated into English. He read it to Romilly, and the latter being struck by and praising its eloquence, Mirabeau asked him to translate it. This Romilly undertook, and it was the foundation of an intimate and lasting acquaintance between the two men, and Romilly always believed that dissolute but splendid genius to have been truly desirous of doing good and animated by the noblest ambition, but marred by an excessive and unconquerable vanity.

So we see our young barrister already in touch with many public men of the Swiss Republic, with the venerable father of our constitutional convention, and with one of the most gifted and potent leaders of the French Revolution.

Romilly meeting John Wilkes and Mirabeau at dinner one day, says Wilkes defended the severity of the English criminal law and its frequent executions with much wit and good humor, but with very bad arguments, insisting that it accustomed men to contempt of death, though it never held out to them any very cruel spectacles; and he thought that much of the courage of Englishmen and of their humanity, too, might be traced to the nature of our capital punishments, and to their being so often exhibited to the people. Mirabeau, however, got the best of the argument, and declaimed against Wilkes's profound immorality until, with one less cool and indifferent to truth than Wilkes, it would have been followed by serious consequences.

Count Sarsfield wrote from Paris asking for some book giving the rules of order of the English House of Commons to assist the States General in regulating debates. No such book was in existence, and Romilly, with characteristic public spirit, prepared a

statement of the rules (as Jefferson did for our Congress). With Sir Gilbert Elliot's corrections they were sent to the Count, who died while translating them. They were, however, at once translated and published by Mirabeau, but the National Assembly paid no attention to them whatever. The confusion of that Assembly was so great that the secretary had often to suspend his Journal, and Dupont, one of the secretaries, told Romilly that it was once pleasantly proposed that they establish a rule that there should never be more than four members speaking at once. Romilly believed that a single rule requiring every motion to be in writing before put by the chair would have had a vast influence in preventing the confusion into which the Assembly constantly fell, and the utter failure under which it went down.

Mirabeau introduced Romilly to our American Benjamin Vaughn, and Vaughn made him known to Lord Lansdowne, who anxiously cultivated his friendship and acquaintance on account of a tract he had written, apropos of the recent trial of the Dean of St. Asaph's, which he called "A Fragment on the Constitutional Powers and Duties of Juries." This he sent anonymously to the constitutional society, which received it with great applause and ordered many copies published and distributed.

Lord Lansdowne became his valued friend and patron, and later offered him a seat in the Commons, which he declined. In the mean time the great Whig peer was most anxious for his professional advancement and that he should produce some work which might attract public notice. The Rev. Dr. Madan had just published his "Thoughts on Executive Justice," in which he insisted on the expediency of rigidly enforcing in every instance the sanguinary penalty of the law, which was still a code of blood, and vehemently censured the judges for their too lenient administration of the criminal law.

Ellenborough loudly insisted it was not true that Madan's tract had any effect, but Romilly shows that 51 persons were executed in London the year before its issue, 97 the year after, almost double the number, about 20 of them at once, and figures are more persuasive than declamation.

Lord Lansdowne was dazzled by Madan's reasoning, and recommended Romilly to write upon the same subject. He looked into the book, however, and was so shocked at the folly and inhumanity of it that, instead of enforcing it, he refuted it in "Observations on a Late Publication Entitled 'Thoughts on Executive Justice,'" adding a letter of Dr. Franklin. Lansdowne, Wilberforce, and a

few friends who knew its authorship, highly approved this little work, and Justice Willes praised it and wondered who wrote it.

Romilly for a time made the criminal law an especial study and attended criminal courts frequently, making notes on all the most notable things observed; chancery business, however, increased in London, and the circuit was gradually abandoned. In 1878 he visited Paris again, with many letters of introduction, particularly from Lord Lansdowne, saw the court in all its gayety, and met Lafayette and Thomas Jefferson, then American Minister. He visited the prisons and hospitals as well, and was shocked at what he saw there, and Mirabeau translated his remarks on them and also his refutation of Madan, publishing them as "*Lettre d'un Voyageur Anglais sur La Prison de Bicêtre.*" The police suppressed the work in Paris, but it appeared in London.

It is plain, I think, ere this, that Romilly was no indifferent spectator of wrong or suffering in the world, but brave and active in his efforts to mitigate them. Speaking with a friend of the Bishop of Durham on the suffering animals were made to endure, he thought great good might be done by bringing into use a mode of slaughtering attended with less pain, and he suggested rewards to butchers who practised such humarer method. Being pressed to write something he did so, and this being shown the Bishop, the latter took it up cordially, and later introduced himself to Romilly, and presently appointed him Chancellor of Durham.

He had grown gradually to be the barrister in largest practice in the court of chancery. And the Prince of Wales, who, as all heirs to the throne are apt to be, was in opposition, offered him a seat in Parliament, but it was instantly declined, lest it should impair his independence, he declaring his resolution, unless he held public office, never to come into Parliament but by a popular election or by paying the common price for his seat, which practice he defended.

In 1806 the Government of all the Talents was formed, and Charles James Fox notified Romilly that the latter was appointed Solicitor-General, and thus his public life began. The administration agreed to bring him into Parliament without expense. It was understood that the appointment was made at the Prince of Wales's request. Erskine was made Lord Chancellor, and called on Romilly, saying he should stand in great need of assistance, asking him what to read and how best to fit himself for his situation, saying, "You must make me a chancellor now, that I may afterwards make you one." Romilly was sworn in, kissed the

King's hand, and reluctantly submitted to the honor of knighthood, having used every influence to escape it, but the King was inflexible. Henceforth he was Sir Samuel.

Tall, graceful, of commanding figure and face which the canvas of Sir Thomas Lawrence still shows was of classical beauty, melancholy, earnest, disinterested; able in argument to expose a sophistry with destructive force, and with powers of sarcasm and irony which made men shrink, and yet with that turn for statistics and utilitarian facts which was then new in parliamentary oratory, he was from the first a great figure in the House. Three days after he was sworn he was asked on behalf of all the managers to sum up the evidence on the trial of Lord Melville, and the day before he performed this function, Mr. Fox, in an oft-quoted interview, told him he was not acquainted with his manner of speaking, but advised him not to be afraid of repeating observations which he thought material, as it was much better some should observe his repetition than that any should not understand him.

From the first he earnestly addressed himself to the amelioration of the criminal law, and to the correction of all brutalizing practices allowed by law, seeking to prevent the cruel and often fatal floggings in the Army and Navy, and to prohibit the slave trade, as well as to reduce the bloody severities of the general criminal law, and, though of so different a faith, seeking the enfranchisement of Roman Catholics. Cases constantly came to his knowledge which showed him the awful uncertainty and the wanton hardship of the criminal administration. For instance, the Lords of the Admiralty desired to have a poor printer prosecuted for libel because he had animadverted on the case of Thomas Wood tried by court-martial for mutiny and murder. The offence charged had occurred nine years before the time of trial, when the accused was but fourteen years old, only one witness identified him, and the prosecution must have fallen except that his defence consisted of a confession of guilt and a plea for mercy on the ground that he had, in extreme youth, joined the mutineers through fear of death. He was found guilty and sentenced to be hanged. His brother and sister (for condemned men may have kindred) heard of this, and insisted he was wholly innocent and not even present on the ship on which the mutiny occurred, but serving on different vessel in a different port. They got a certificate of this from the Navy Office and sent it on to Plymouth where it arrived before the execution. The guilt of the prisoner appeared so plain that no regard was paid to the certificate, and the man was hanged.

The Independent Whig spoke of this with great severity, and the prosecution for libel was demanded. The Attorney-General had no doubt as to the guilt of Wood, but thought it right to make some inquiry, when it transpired that he was perfectly innocent and at a remote point when the crime was committed. He had applied to another man to write his defence and had read it thinking it would excite compassion and be more likely to save him than a denial. The Attorney-General prevented the prosecution of the printer for libel, but he could not restore to life Thomas Wood, who had already been hanged by the neck until he was dead.

The prisoners confined in the King's Bench for debt asked Romilly to present their petition to Parliament for a revision of the law as to debtor and creditor, and he consented to do so. He supported Whitehead's bill for parochial schools, and met the argument that facility in obtaining knowledge would promote false notions in politics and religion by declaring that it proceeded on "the false supposition that if discussion were left free, error would be likely to prevail over truth."

It will be observed that all the above ideas which he advanced and supported have long since prevailed and become commonplace. He wrote Dumont that he desired to invest criminal courts with a power of making, to persons who shall have been accused of felonies and acquitted, a compensation to be paid out of the county rates for the expenses they will have been put to, the loss of time they will have incurred, the imprisonment and the other evils they will have suffered, and to remove the severity of the law which had arisen from accidental circumstances, as in case of felonies made capital according to the value of the thing stolen, whereby through the depreciation of money, "as all the articles of life have been gradually for many years becoming dearer, the life of a man has in the contemplation of the legislature been growing cheaper and of less account." Sir James Scarlett advised him to seek to repeal all capital punishments for thefts unaccompanied by violence or circumstances of aggravation. This he much wished, but deemed a hopeless attempt.

Therefore he merely introduced a bill to repeal the act of Queen Elizabeth making it capital to steal privately from the person of another. In the debate the opponents insisted that it ought not to prevail, as pocket-picking was already on the increase, and many boys were tried for it. Sir Samuel well answered if the present law did not check but increased the crime, it was a strange

argument for its retention. He found the horror excited by the excesses of the French Revolution had resulted in making it almost impossible to effect the most reasonable reforms. He quotes as characteristic the speech of the young brother of a peer made to him in the Commons. "I am against your bill. I am for hanging all;" and when Romilly said he supposed he meant that certainty of punishment afforded the only prospect of suppressing crime, "No, no," said the young patrician, "it is not that. There is no good done by mercy. They only get worse. I would hang them all up at once." However, with slight amendment his bill to take away the death penalty for stealing privately from the person became a law, and the theft of a handkerchief from a pocket was no longer a hanging matter. He brought in a bill to relieve debtors in custody for not paying money or costs ordered paid in chancery. This, too, passed and became a law without opposition.

At this time Colonel Wardle moved for an address to the crown to remove the Duke of York from the command of the army, charging that royal personage with the corrupt disposal of commissions and promotions in the army. It was established that he had permitted a Mrs. Clark, his mistress, to interfere in these matters, that he had given commissions upon her recommendations and that she had sold her recommendations, and it was in evidence that the Duke knew of her unlawful traffic. The King and the Prince of Wales took the strongest interest for the Duke, and the administration sought to shield him, but Romilly bravely supported Colonel Wardle's motion. The great placemen among the lawyers in the House, including the Master of the Rolls, a high judicial officer, supported the Duke. Romilly and Henri Martin alone among the lawyers in the House, supported Colonel Wardle, but the bar outside was strongly with Colonel Wardle.

Romilly was told that by his course at this time he had lost his chance for the Lord Chancellorship, which, as leader of the chancery bar, he stood in close succession to. He said he was not quite sure of that, but was sure after the part he had taken that if raised to the Chancellorship "it will not be in expectation that I shall act in it otherwise than as an honest man." On motion of Perceval by a large majority the royal profligate was exonerated, but immediately thereafter resigned from the army, only to be shortly reappointed commander-in-chief.

The thanks of the Livery of London, the inhabitants of Westminster and Southwark, the freeholders of Middlesex, the corpo-

rations of Nottingham, Liverpool, Sheffield, and many of the great towns, were voted Romilly for his conduct in this matter.

Romilly from time to time moved for returns as to criminal convictions and executions and of persons transported for crime. In 1810 he brought in three bills to repeal statutes inflicting the penalty of death for the crimes of stealing privately in a shop goods of the value of five shillings, or forty shillings in a dwelling or on board a vessel in a navigable river. The Solicitor-General, with his usual panegyrics on the wisdom of the past and the danger of interfering with what is established, announced that he would oppose.

Though supported by Sir John Newport, Master of the Rolls, by Canning, and Wilberforce, Romilly was defeated in his motion for the repeal of the death penalty for forty shilling thefts in dwellings, but carried it as to privately stealing in shops; that as to stealing on vessels was postponed. Lord Holland took charge of the bill as to five shilling thefts in the Lords, but it was there rejected by thirty-one to eleven, among the inhuman majority there being seven prelates headed by the Archbishop of Canterbury, primate of all England.

Lord Ellenborough, always hard and wrong, spoke against it — Lord Erskine, whose eloquence sprang from a warm and humane heart, for it. The main argument was that innovations were dangerous, an argument still heard, and it was said that the House should consider that the author of this act had been the author two years before of an act to abolish the punishment of death for pocket-picking, and that the consequence had been a great increase of crime. Lord Lansdowne pointed out that all that was known was that prosecutions were more frequent than before, and this proved the efficacy not the failure of the amended law, the old deadly Code being simply unexecuted. Lord Ellenborough said there was no knowing where this was to stop, that he supposed the next thing would be to repeal the law which punishes with death the stealing to the amount of five shillings in a dwelling-house, no person being therein, and that act, he declared, afforded security to the poor cottager that he should enjoy the fruits of his labor; and he pathetically described the situation of the poor, relying with confidence on the security the law afforded them for the scanty comforts which they were allowed. He complained that the amendment punished the offence merely by transportation, which he described as only "a summer airing by an easy migration to a milder climate."

In 1811 Romilly carried four bills to repeal statutes imposing the death penalty for petty thefts through the Commons against the government, but three of them were thrown out by the Lords under the lead of Ellenborough, the Chancellor, Lord Eldon, and Lord Redesdale, one only, as to stealing from bleaching grounds, was allowed to pass.

In 1812 Romilly moved to repeal the statute of Elizabeth which made it capital for soldiers or mariners to wander and beg without a pass, and this became a law. He supported a bill to abolish flogging in the army, it appearing that under this ghastly punishment men frequently died after great agony, but he had only seven members with him.¹

Romilly had for some years sat in Parliament by virtue of a purchased seat for which he paid 3000 pounds, but now he was put forward for a popular election from the important city of Bristol, but after an exciting campaign he suffered a defeat. The Duke of Norfolk at once offered him a seat in Parliament from Arundel, with no expense save a dinner to the electors, and this was accepted.

In 1813 he moved to do away with death for stealing goods of the value of five shillings privately in a shop, warehouse, or stable; to do away with embowelling alive and quartering as punishments for high treason, and to take away corruption of blood for attaider of treason or felony. He carried the first in the Commons, but it was thrown out by the Lords, law lords and bishops being conspicuous in opposing it; and the other two bills were defeated in the Commons; but a year later, were, in modified form, carried, though to the last Lord Chancellor Eldon and Lord Ellenborough had tremendous doubts as to the safety of society if they should pass.

In 1815 he carried in the Commons a bill to make freehold estates liable for simple contract debts of the deceased owner, but the indefatigable Lord Ellenborough, the Lord Chancellor, and Lord Redesdale, with their faces turned to the past, said such dangerous innovations tended to destroy primogeniture, and the Lords threw it out. About the same time the enlightened Ellenborough succeeded in defeating a bill passed by the Commons to do away with the pillory, mainly on the ground of the antiquity of the punishment, saying it was mentioned by Fleta.

¹ I observed with interest that the Romilly Society took steps a little over a year ago to oppose a bill in Parliament for the restoration of flogging as a punishment for certain crimes, and the measure was defeated.

When again in 1816 Romilly's bill to do away with death as the penalty for petty shoplifting was on its passage in the Commons, he stated to the House that a boy named George Barrett, only ten years of age, had been convicted of the offence at the Old Bailey and was then lying in Newgate under sentence of death. The bill passed the Commons, but was again defeated by the Lords under the lead of Ellenborough, as was the bill to subject freeholds to debts.

In 1818 Romilly was invited to contest Westminster, and accepting, was returned at the head of the poll and was received with enthusiasm by the people. His friend Jeremy Bentham came out in the campaign in a handbill against him on the ground that he was a lawyer, a Whig, and a friend only to moderate reform; but Sir Samuel nevertheless records a few days later a pleasant dinner at the great Utilitarian's, at which he met the American Minister, Mr. Brougham, and Mr. Mill.

Sir Samuel met, in 1796, at Bowood, Lord Lansdowne's country house, Anne Garbett, and a strong attachment immediately arose, and about a year later was followed by a most fortunate and happy marriage. In October, 1818, Lady Romilly died after an illness of some weeks, and three days later Sir Samuel, worn out with sleeplessness and grief, took his own life at his house in Russel Square, in the 62d year of his age. A contemporary London journal shows that the coroner's inquest found a verdict of temporary mental derangement. His death was regarded as a public calamity by persons of all parties, and Lord Eldon was moved even to tears.

Many years before Romilly had written the first of a series of letters on the reforms which he would attempt when Lord Chancellor, and the preparation he should make to justly fill that great office. Later, when by the integrity of his course he could no longer hope for office, he wrote, "Though it be now evident that I shall never be raised to any high office, yet I am resolved to conduct myself as if I knew that the highest dignity was my certain destination." He maintained a great and lucrative practice while serving as a laborious member of the House of Commons, sometimes receiving as much as 15,000 pounds a year, and was for many years the leader of the chancery bar.

He left a numerous family, and his son John raised himself to eminence at the bar, became like his father, Solicitor-General, later Attorney-General, and finally Master of the Rolls, and was advanced to the peerage as Baron Romilly in 1866, dying full of years and honor in 1874.

In despairing grief and tragedy Sir Samuel's gifted and high purposed life went out, but the fatal act of the stricken and deranged man could destroy his body but not the good he had already accomplished. One after another the reforms he strove for and did so much to promote have been accomplished, until the statutes of much of the civilized world are even more reluctant to take human life than Romilly sought to make the laws of England.

It was not until about three years ago that the Romilly Society was organized, having for its object the calm investigation of the condition of criminals, the prevention of wanton or useless hardships inflicted upon them, and the general amelioration of their condition. As Mr. C. H. Hopewood, K. C., Recorder of Liverpool, the Hon. Secretary of the Society, has stated, the name of Sir Samuel Romilly was adopted in the title of the Society because to him belongs the merit of being the most distinguished and the earliest of those who advocated a more merciful criminal law than that which previously existed.

That process of reforming and humanizing the criminal law has grown until few crimes are now capital among civilized people, except treason and wilful murder, which were the two offences which Jefferson, in the amended penal laws which he carried, left punishable by death. Sir Robert Peel and Lord John Russell, in Great Britain, as successive secretaries of state, about seventeen years after Sir Samuel's death, were able to make wholesale abolishment of the death penalty practically in all crimes except murder.¹

Sir John Scott in a most interesting address, very recently given before the Liverpool Board of Legal Studies, entitled "British and European Criminal Law Compared," declares the British system probably sounder than any in the world. He points out that the tendency of the inquisitorial system of the continent is to think solely of the safety of the state and to sacrifice the individual, and such is the tendency in every country except England and America, while that of the English accusatory system, which is ours as well, is to surround the accused with safeguards and to consider his interests more than those of the community.² Sir John believes neither of these absolutely right, but after reading his account of conti-

¹ Address of Sir Charles Cameron, Bart. and M. P., before Romilly Society, 1899.

² Montesquieu says: "In moderate governments where the life of the meanest subject is deemed precious, no man is stript of his honor or property but after a long inquiry; and no man is bereft of life, till his very country has attacked him, an attack that is never made without leaving him all possible means of making his defence." The Spirit of Laws, Book VI. ch. 2.

mental trials, where, as he says, there is no law of evidence, one sympathizes with Voltaire's blasting picture of a French Judge which Sir John quotes from the Philosophical Dictionary. "In the Dens of Chicanery," says that nervous writer, "the title of Grand Criminalist is given to a ruffian in a robe who knows how to catch the accused in a trap, who lies without scruple in order to find the truth, who bullies witnesses and forces them, without their knowing it, to testify against the accused . . . he sets aside all that can justify an unfortunate, he amplifies all that can increase his guilt; his report is not that of a judge, it is that of an enemy. He deserves to be hanged in the place of the citizen whom he causes to be hanged."

Sir John says: "A codification of Criminal Laws has been carried out in every country save England," and he sees no reason why it should not be carried out there. That the Indian Penal Code which was drafted by Lord Macaulay has proved an admirable success. "The penal codes which are applied in all the countries of continental Europe are an equal success."

By the courtesy of Gov. A. C. Botkin of the Commission to revise and codify the criminal and penal laws of the United States, I have just received the report of the commission, and I observe with interest that so far as I can ascertain in the absence of an index in the Code, the penalty of death attaches only to treason and murder in the first degree; and that piracy and offences under the anti-slave trade laws, casting away vessels, etc., which were punished by death under the earlier statutes, are to be no longer capital felonies.

The careful student of penology seems irresistibly driven to the conclusion that crime is best prevented and the public best protected by moderate punishment inflicted with certainty and promptness. The Hon. Sir J. C. Mathew, Judge of the Supreme Court of Judicature, in giving the annual address before the Romilly Society in 1900, was able to say, "that the diminution of sentences and the diminution of crimes have gone on together." General Curtiss, of New York, speaking in our House of Representatives in 1892, quoted statistics conclusively showing that the abolition of the death penalty, as moved by Romilly for certain offences, had materially reduced the number of persons charged with those crimes, but much increased the proportion of those charged who were convicted, justifying Sir Samuel's predictions.

The criminal laws of our own country and their administration in the matter of that chief crime homicide, afford the good citizen

little satisfaction. The statistics on this subject, compiled by the Chicago Tribune, seem to be thought as full and authentic as any, and are adopted largely in statistical works.

They show in about five years (up to Nov. 13, 1900) 39,874 homicides committed, and as they cover about a month and a half less than five years, we can call it 40,000 for five years, or an average of 8000 per year, which is appalling. They also show, however, a steady decrease in the number of homicides, there being 10,652 in 1896, and in 1900 (up to Nov. 13) 5637, a decrease of nearly one half in five years, which is deeply gratifying.¹

In these five years in which there were, as we have seen, about 40,000 homicides, there were but 597 legal executions, about one homicide in 67 being followed by the death penalty legally inflicted. There were, however, in the same time, 632 deaths by lynching, just 35 more than by legal executions, so that about 2 homicides in 67, on an average, were punished by death inflicted either by law or by the mob.

These figures cannot be very satisfactory to men who shape, interpret, and administer the law. It is at least gratifying to note that the number of lynchings which nine years ago rose to 235 in a twelvemonth, has, contrary to popular belief, quite steadily decreased, having fallen in 1899 to 107 and up to Nov. 13 in 1900 to 101, a diminution of more than one half.

The prevalence of homicides, the fact that so few are legally punished and so many lawlessly avenged, certainly shows a grave defect which it lies with the legal profession to seek to reform. It is not easy to suggest a remedy, and the subject is often discussed with so much feeling as to embarrass reason. I have read many articles in legal publications considering it. It has been the subject of animadversion in foreign publications of the highest standing, as the Juridical Review of Edinburgh, and the *Revue des Deux Mondes* of Paris, and in our own publications as well; but while I gather very much by way of invective and denunciation, I find very little in the way of suggestion for improvement in most that has been written.

One writer, Mr. O. F. Hersey of the Maryland bar, advocates that lynching or aiding or abetting it be made a federal crime, so that the accused may be tried before a United States Judge and by a jury from the district instead of the county, and urges this

¹ The total number of deaths by violence in the United States during the year 1901 was 7852, a decrease of 423 from the number of the preceding year.

on the ground that a local jury will never convict, and that the crime is of national importance. This would seem to require an amendment to the Federal Constitution to make it lawful, and the possibility of obtaining such amendment is so remote that the course seems hardly feasible whatever might be thought of it otherwise.

A writer in the Yale Law Review¹ believes that a great proportion of these lynchings, due to assaults on women, might be avoided if the injured person were not, in order to a legal conviction, compelled to testify publicly to the circumstances of the assault. That the injured person so abhors this that there can be no conviction, and hence a lawless execution follows as the only punishment possible. He suggests, and submits the draft of a law for it, the examination of the injured party and the taking of the testimony by way of deposition, the accused, the witness, and the counsel for each, alone attending before the officer, and he argues that this practice would be constitutional. If it avoids constitutional objections, it might be beneficial.

Mr. Charles J. Bonaparte of Baltimore, whose labors for many valuable reforms I appreciate, proposes in the Yale Law Review:²

1. To increase the number of capital crimes so as to insure the extirpation of the habitual criminal.
2. To diminish the delays and uncertainties of criminal procedure, thereby it would seem destroying many safeguards against unjust conviction.
3. To remove the pardoning power from the executive and vest it in judicial officers.

His third suggestion seems to have value in it, but the second seems by no means free from danger, and it is submitted that the first is not in agreement with the tendency of modern feeling or legislation, and that there is nothing in the history of penology to support it. Laws like those of Illinois making kidnapping a capital offence, induced by the hysteria following the abduction of young Cudahy, hardly seems wise. The newspapers of a few days ago report a flagrant case of kidnapping in Illinois, and it is submitted that an Illinois child is no safer than his neighbor across the line. A bloodier code as a means to reduce crime has always been a failure in point of fact, as history very fully shows.

A lurid, tragic, and awful punishment so accents the crime for which it is imposed, that I venture to believe that it operates often

¹ Vol. 7, p. 20.

² For May, 1899.

to promote instead of to prevent its repetition. The excited reflection upon a shocking act by many thousands of persons, including numbers of low intelligence and morale, and of morbid disposition, operates as a dangerous hypnotic suggestion to the same crime.

" Between the acting of a dreadful thing
And the first motion, all the interim is
Like a phantasma or a hideous dream."

According to the old fable, ostriches hatched their eggs by looking at them, and many a brood of crime has certainly been hatched by contemplation. If the criminal, after a prompt and efficient but just trial, disappears quietly in a life of confinement and enforced labor, the effect is far more wholesome, far less morbid. Therefore I would, with deference, suggest milder rather than harsher penalties.

In the matter of homicides, General Curtiss in 1892 quoted a letter from the editor of the Chicago Tribune (whose statistics I have alluded to) to the effect that the states showing the fewest murders in proportion to population, are Maine, Rhode Island, Vermont, Michigan, Minnesota, and Wisconsin. Four of the six have for many years excluded death from the punishments of their criminal code. Quite recently Colorado has abolished the death penalty, and it will be of interest to note whether a comparatively new and sparsely settled state can do so with good effect. Certainly no increase of lynching seems to be noted in states abolishing the hangman.

Harper's Weekly in 1897 contrasted the records for six years of various states in the matter of lynching, and showed two states which had each seven capital crimes upon its statute books, had to report, one 104, and the other 116 lynchings, while Michigan, with no capital punishment, had but 3. Wisconsin, with no capital punishment so far as I can learn, had but one, which followed a very atrocious murder. That lynching was followed by a prosecution of seven of the lynchers, but the jury acquitted them promptly on the ground of insanity.

I only suggest that the standards of humanity are largely affected by those of law, and that men's feelings shape themselves largely to the regulations of statutes; that moderation and all reasonable humanity in the punishment of crime lessens crime in the best way by improving the hearts of men; and that an opposite course increases it by hardening men's hearts. "Experience shows," says Montesquieu, "that in countries remarkable for the

lenity of their laws, the spirit of the inhabitants is as much affected by the slight penalties, as in other countries by severer punishments."

The solving of these difficulties lies largely with our profession, and I have spoken of them not because they are easy, but because they are hard, not because I know exactly how they can be met, but because I believe Romilly afforded us an example of a great lawyer who sought to meet and solve such questions to the best of his ability, and because the three generations that have passed since his death have tended to confirm rather than to confute his theories of law reform.

Perhaps it was because he was a lawyer and a friend only to moderate reform, as Bentham complained, that he achieved so much and laid the foundation for so much more in the line of lasting, steadily growing improvement.

The value of Bentham's writings cannot be doubted, nor their world-wide effect, by indirection, on legislation. Romilly himself was his earnest but not servile disciple. I had the pleasure of speaking of Bentham's services to the bar of Virginia at a recent meeting, but so far as I can learn, no measure drafted by Bentham ever passed directly into the statutes, whereas numbers of those proposed by Romilly had that good fortune.

I am confident that questions of legal and administrative reform are largely for men of our cloth, and I feel with Romilly that "all the greatest reforms in human affairs have been brought about by steady perseverance in the doing of old established impossibilities." When he sought to do away with the penalty of death for a theft of five shillings' worth of goods from a shop, Lord Eldon declared, "If the present bill be carried into effect, then may your Lordships expect to see the whole frame of our common law invaded and broken in upon."

My only answer is, if it is defective, ineffective, or unjust, why should it not be broken in upon? Why should the worse stand when the better can be substituted? It has been and is the reproach of many of our profession in high place that they have devoted ability and influence to a stubborn resistance to all reform, instead of to guiding it and making it wise and efficient.

When Sir William Scott, afterwards Lord Stowell, Lord Eldon's brother, opposed the measures which were proposed for doing away the evils of the ecclesiastical courts in England, Romilly turned to him in the debate and splendidly exhorted him not to oppose, but as the best qualified lawyer in England, to draft and

carry the needed amendments, and, many others joining in the request, Sir William at last complied.

I will ask your indulgence if I confess that after nearly thirty years at the bar and after some small share of victories before the courts, the service that I look back to with the most satisfaction is in a matter of legislation. If I may speak of a personal matter, I happened to hear Sir Henry James, now Lord James of Hereford, and Sir Farrar Herschel, later Lord Herschel, advocate the passage of the English Corrupt Practices Act in the Commons, and so instigated, later drafted and presented a bill for kindred enactments as to corruption in elections to the legislature of my own state. After years of discussion and more than one failure, and after others had done more for it than I could do, I finally had the satisfaction of seeing that measure become in great part a law.

Now when I observe the United States senators, governors, and other great officers (and humbler men as well) making sworn returns of the cost of their candidacy and election under this law, and see these returns published and commented on by the press, I feel that there has been introduced a practice tending to probity in public affairs, affecting already some two millions of people, and when, after a bitter attack in the last legislature, I saw the law retained, I ventured to hope for the salutary law perpetuity except as it may be made stronger and not weaker in years to come.

I have never felt it right to smother the voice of protest against wrong. A friend recently told me that he witnessed an incident in a medical school in Vienna which illustrates a typical method of suppressing complaint, which, I submit, ought not to prevail. An anatomist was performing a bloody demonstration upon a living dog which had been chloroformed, and, like the old English traitor, was disembowelled before death. The anæsthetic proved inadequate, and there was heard a rising note of agony from the poor beast, so pitiful that a murmur of protest arose even from the accustomed company of medical students. The moans of the dog presently ceased, and as the lecture ended some one said to the assistant, "You gave the dog some more chloroform, did n't you?" "Oh no," was the answer,—"just cut his vocal cords." That is some men's idea of righting a wrong in a community, simply cut the vocal cords, browbeat and destroy those who complain, and declare that "order reigns in Warsaw."

I trust that the bar will oppose its potent voice to this deadly policy and will aid a wronged class or community as it aids the wronged individual to a hearing and to just relief.

Surely the spirit of Romilly which looks forward is better than that of Ellenborough which looks back, and it is better to save a child of ten from hanging for a theft of five shillings than to preserve the inestimable boon of the pillory, because Fleta mentions it.

I congratulate the bar that this better spirit has dominated the commission which has revised our federal criminal code. I hope under the controlling influence of our liberal profession it may animate and direct the revision of the statutes constantly occurring in our several states, until no one who is punished can reproach with injustice the law itself or the judge and the lawyer who are its ministers.

I hope we may travel toward a golden age, and not, as some have taught, away from it; and in that unending journey toward justice, humanity, and tranquillity, I hope the gentlemen of the bar may march first and not lag last. Many a one of them, I hope, may emulate the noble spirit of Sir Samuel Romilly and choose great service rather than high office, a memory which brightens at a century's close rather than one that fades with the dissolving flesh of him that made it.

The good work is not all done, and the great spirits are not all quenched. When the elder Pitt spoke for the last time, and Edmund Burke for the first time, in the House of Commons, Macaulay calls it "a splendid sunset and a splendid dawn," and as in nature we see this succession of days that in glory die giving way only to days that in glory are born, so a larger vision may view the succession of high souls and services, leading up the progress of mankind like the dawns and the sunsets, the one kindling the other, encircling the earth with a girdle of light immortal and ever shining.

"We cannot . . . look into the seeds of time
And say which grain will grow and which will not;" —

but the use of history is to discover the course in the currents and tides of time and civilization, and the plain duty of enlightened men is then to aid and not to obstruct, to move with and not vainly seek to row against the beneficent progression.

Romilly's life, despite its tragedy, was crowned with the benedictions of mankind; his sons continued his name and service in honor and distinction, three of them serving in Parliament, and now many of the foremost lawyers and judges of England are associated under his revered name in carrying on the good works he so bravely began. So that his name remains a perpetual foun-

tain of inspiration to those good works which belong essentially to the man of law, and which are within the competence of our profession.

Law will grow more and more humane and lenient; that has been its unbroken course for generations. The Romillys rather than the Eldons and Ellenboroughs will be in sympathy with the after generations; and the lesson of policy no less than duty calls us to move with that great world-wide tide of progress which knows no receding.

" Like to the Pontic Sea
Whose icy current and compulsive course
Ne'er feels returning ebb, but keeps due on
To the Propontine and the Hellespont."

At the first Christmas time after Romilly's death, Benjamin Constant pronounced his eulogy at the Athénée Royal, in Paris, and spoke of him as "*d'un étranger illustré qui appartient à tous les pays, parce qu'il a bien mérité de tous les pays, en défendant la cause de l'humanité, de la liberté, et de la justice.*"

May we recall only to emulate this illustrious stranger who has brought such high and lasting honor to our common profession.

In this matter of justice, the world in its need turns to the bar, saying, like the leper of old, "If thou wilt, thou canst make me clean," and the highest service of the bar is to answer that cry. It can be best answered, moreover, not under the promptings of prejudice or passion, but under "the salutary influence of example" set by such noble leaders of the bar as Sir Samuel Romilly, who made the past a teacher, not a master, and the future a hope and achievement rather than a dread and despair.

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